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City Club of Portland (Portland, Or.)

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REPORT ON
MANDATORY WEATHERIZATION OF BUILDINGS REQUIRES VOTE
(MUNICIPAL MEASURE NO. 51)

Purpose: "Amends City Charter to provide that except for provisions of the City Building Code in effect September 1, 1979, the City Council shall not pass or enforce any ordinance, resolution, law or program mandating weatherization for any building built prior to September 1, 1979, unless referred to the citizens for a vote."

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

The Measure requires an automatic referendum on any ordinance, resolution, law or program formulated by the Portland City Council which requires weatherization of buildings in existence on September 1, 1979, except to the extent that the City Building Code in effect on that date so provides.

The City Charter is amended by adding the following section (excluding titles):

"Except for the provisions of the Building Code of the City of Portland in effect on September 1, 1979, the Council of the City of Portland shall not pass or enforce any ordinance, resolution, law or program mandating weatherization for any building or structure built in the City of Portland prior to September 1, 1979, unless such ordinance, resolution, law or program is referred to the citizens of Portland for a vote."

At present, there is no such mandatory weatherization requirement or implementing ordinance. The Measure is aimed at the adopted City Energy Policy ordinance which states that an "objective" of the Policy is to begin in August of 1984 to require weatherization which is "cost effective" for residences and business buildings.

II. BACKGROUND

In 1975, the City commissioned a study of energy usage and conservation options. The study, performed by Skidmore, Owings & Merrill, UMA Engineering, Inc., Urban Research Systems and the Natural Resources Law Center at Lewis & Clark College ultimately ran to eleven volumes. Its recommendations were presented in June 1977. The City Council then appointed an Energy Policy Steering Committee of 15 individuals from private industry, labor, public utilities and the schools, and asked the Committee to draft a recommended energy policy for the City. The Steering Committee created six technical task forces which reassessed the programs presented in the earlier study. Based on these assessments, the Steering Committee created policy guidelines.

The Steering Committee worked steadily for almost a year and a half to produce a "Discussion Draft of a Proposed Energy Policy for Portland." This draft was then subjected to more than 40 public hearings attended by approximately 2,000 people. In August 1979, the City Council passed Ordinance No. 148251 which adopted an Energy Conservation Policy for the City.

In the meantime, a City Club Study Committee was organized in April 1977 to study and report on energy conservation in Portland. After a 22-month study by the Committee, on April 27, 1979, the City Club approved a report on "Energy Conservation in the Portland Metropolitan Area."¹ The report concluded, among other things: 1) a "tremendous amount of energy and money is being wasted because a majority of residential, commercial and smaller industrial consumers fail to recognize the importance of energy conservation," and 2) that most of these consumers "are not presently inclined to take voluntary conservation actions." The report also concluded that a policy requiring weatherization at point of sale would "represent an unwarranted government intrusion into private affairs." The Committee stated that it believed "the same energy conservation objectives can be promoted simply by requiring owners to furnish a certified rating of a dwelling's energy efficiency when they offer it for sale or for rent."

The Energy Policy adopted by the City in September 1979 has a number of elements which involve transportation, land use planning, alternative energy resources and energy usage by the public and private sectors. The controversy which led to Measure 51 was generated by Policy #2 of the Ordinance. It provides, "The retrofit of existing buildings for the purpose of energy conservation shall be accomplished through voluntary actions initially, with mandatory requirements imposed five years after the adoption of the policy." (For full text of Policy #2, see Appendix C.)

In September 1979, Multnomah County Commissioner Dan Mosee proposed that Policy #2 of the Ordinance be referred to a vote of the people of Portland. The City Attorney advised him that an ordinance which merely states general policy and is not an implementing ordinance, is "not subject to referendum or repeal by initiative." Accordingly, Measure 51 was proposed, apparently to forestall any future implementing ordinances or action by the City to invoke mandatory weatherization of existing buildings without referring such actions in advance to a popular vote by referendum. Measure 51 was placed on the ballot by initiative petition signed by more than 15,000 voters.

There are no mandatory weatherization requirements now. The City Energy Policy states that mandatory requirements shall be imposed in five years (August 1984), but does not specify what those requirements should be, except to say they should be "cost effective," and that such "cost effective" weatherization should occur in the case of residences at the time of sale. In the case of rental units, such weatherization "may" be required at the time of unit turnover.

Measure 51 does not eliminate the mandatory aspects of the Policy; however, it does provide that any measures passed by the City Council

1. City Club of Portland Bulletin. Vol. 59, No. 50. April 27, 1979.

which require weatherization must be approved by the voters of the City before becoming effective.

III. SCOPE

Because Measure 51 was not approved for referendum to the voters until August 8, 1980, this Committee did not have time to explore fully the issue of mandatory weatherization. However, it is impossible to address the Measure without a brief explanation of the arguments for and against mandatory weatherization. Proponents and opponents of the Measure focus on the desirability of mandatory weatherization in discussing the Measure because most of them feel that the Measure will have a significant effect on the future of mandatory weatherization. Therefore, they feel that to evaluate the Measure, the voters must decide whether they agree or disagree with mandatory weatherization.

The Committee has concluded that agreement or disagreement with mandatory weatherization is not required to make an intelligent decision regarding the Measure, but some discussion of mandatory weatherization is necessary. Therefore, Section IV below sets forth the arguments for and against automatic referral (the Measure) and for and against mandatory weatherization.

IV. ARGUMENTS CONCERNING THE MEASURE

The Committee found that there are two separate issues expressed in this Measure:

Issue 1. Support or opposition to the concept of automatic referral to the voters of any implementing action by the Council upon any type of mandatory weatherization.

Issue 2. Support or opposition to mandatory controls requiring specific weatherization.

A. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

Relating to Issue 1 (support for automatic voter referral):

1. A government program requiring a large portion of the public to take positive action and involving a restriction on personal freedom and property rights should not be adopted without a vote of the people.

Relating to Issue 2 (opposition to mandatory weatherization):

1. Government interference with personal freedom is unjustified without a demonstration that voluntary programs will not accomplish necessary conservation.

2. Because economic pressure from the high cost of or scarcity of energy will force individuals and business to weatherize, mandatory controls are not needed.

3. The claim that only cost-effective weatherization will be required is based on a cost-effectiveness calculation which is subjective, unproven, not clearly ascertainable, and probably unworkable.

4. The claims of the proponents of mandatory weatherization concerning potential savings are based on an incomplete data base.

5. There is no assurance that low cost loans will be available to finance weatherization. When owners die or become divorced, or when tenants move, there may be no funds to pay for weatherization. The cost will fall heavily on senior citizens and low income homeowners.

6. Mandatory controls would require a mechanism to monitor the sale of 20,000 homes annually resulting in delays, uncertainties and waste.

7. Government should not undertake new programs, especially where enforcement is required, until the need for such a program is well documented. Moreover, once a bureaucracy is established, it tends to be self-perpetuating and unresponsive to individual problems and needs.

8. As a practical matter, landlords will not be able to raise rents sufficiently to pay for mandatory weatherization expenses and therefore will bear an unfair portion of the cost.

9. Weatherization does not necessarily reduce energy consumption. In some cases, persons who have weatherized have actually increased their overall energy consumption, thus offsetting net energy savings.

10. Weatherization in Portland will have no effect on the price of energy. The world market determines the price, and Portland's use is a small portion.

B. ARGUMENTS ADVANCED AGAINST THE MEASURE

Relating to Issue 1 (opposition to automatic voter referral):

1. The Measure requires a referendum on all ordinances or actions "mandating" "weatherization," but it is not clear what these two words mean.

2. Passage of the Measure would create the sense that Portland's entire energy program has been repealed, thereby undermining voluntary efforts to conserve energy.

3. A vote against this Measure is not a vote for mandatory weatherization. The proposed controls are to be implemented only if the voluntary program is unsuccessful after a period of five years.

4. Requiring voter approval of legislative action defeats the purpose of representative government and creates inefficient decision-making.

5. Automatic referral is unnecessary. Voters already have the right of referendum on any implementing ordinance by obtaining the appropriate number of signatures.

Relating to Issue 2 (support for mandatory weatherization):

1. A successful program to change behavior requires three parts:

- a. education;
- b. loans, tax credits, financial incentives; and
- c. mandatory controls.

2. Setting a date (1984) for mandatory controls speeds voluntary action.

3. The knowledge that everyone, including business, will be required to weatherize creates a sense that weatherizing is the "right" thing to do.

4. If some residents or businesses do not weatherize or conserve, then those who do must still share in the cost of energy caused by construction of new generating facilities which are needed to meet the consumption demands.

5. It is not fair to waste a scarce and necessary resource which is held in common with others.

6. Mandatory controls provide a sense of strong government leadership in the pursuit of energy conservation goals.

7. The mandatory aspect of the City's Energy Policy is important if Portland is to achieve an estimated savings of \$1 billion in energy costs by 1990.

8. Passage of the Measure may undercut private sector support for the weatherization loan program.

9. Passage of the Measure would impair Portland's unique reputation for environmental concern and action.

10. The effect of increased energy costs on people with low or fixed incomes could be devastating. Without conservation, their energy costs would increase more rapidly.

11. The availability of electric energy is critical for industrial development to provide jobs for an expanding population. The energy available for industry is restricted when energy is wasted.

V. SYNOPSIS OF ARGUMENTS REGARDING MANDATORY WEATHERIZATION

In the course of the Committee's work, a substantial number of arguments regarding mandatory weatherization were heard. As previously stated, it is beyond the scope of the report to make a detailed evaluation of these arguments. However, the analysis of the Measure is so closely tied to arguments for and against mandatory weatherization that the Committee includes a synopsis of the positions taken by the opponents and proponents of mandatory weatherization.

A. Position of Mandatory Weatherization Opponents

Opponents of mandatory weatherization submit that while energy conservation is needed, it is not appropriate to impose mandatory requirements. They believe that much of the needed weatherization will be achieved through voluntary actions by residential and commercial building owners without government mandates.

They acknowledge that the level of weatherization may be somewhat lower without the prospect of mandatory provisions. However they feel that further government regulation is, on balance, a more unpalatable alternative, especially given the propensity of governmental agencies to be inefficient, self-perpetuating, and inflexible. They cite the difficulty of determining whether a given procedure is or is not "cost effective," the lack of any assurance that low cost loans will continue to be available to finance the initial cost of weatherization, and the errors in judgment made by government regulators in the past.

In the view of opponents of mandatory weatherization, the difficulty of finding funds for "retrofit weatherization" of rental units at the point of unit turnover, rather than at point of sale, may create a special inequity. When there is a sale, there will usually be funds available to pay for weatherization. When a tenant moves out, no such funds are produced.

Opponents of mandatory controls believe that before the government sets up a new bureaucracy to enforce weatherization, there should be more evidence that individuals will not weatherize on their own, given proper incentives and information about the money that they will save.

B. Position of Mandatory Weatherization Proponents

Proponents submit that there is a real energy crisis. Energy conservation will be one of the major components of any program for meeting energy needs. Initially, efforts should be directed toward making weatherization as attractive as possible so that most owners will weatherize voluntarily. While education and incentives are important, the potential of mandatory provisions is necessary to achieve a sufficiently high level of energy conservation. Proponents assert that only a broad based approach, including the prospect that ultimately everyone will be required to weatherize, will cause a realization that it is in each person's own interest to weatherize.

Support for conservation programs will be weaker, it is argued, if the general public does not perceive that these programs are fair and are being applied equitably. If a significant segment of the public is permitted to waste energy by not weatherizing, the rest will be less willing to weatherize voluntarily.

Proponents of mandatory controls state that although the rules and regulations have not yet been adopted, the mandatory controls will not be onerous. They state that low-interest and no-interest loans are now and will continue to be available for "retrofit" weatherization. The gas and electric companies are now offering no-interest and low-interest loans. The City has received commitments for over \$16 million in federally backed low cost loans to be available this year, not just for low income and special groups, but to everyone in the City.

Only "cost effective" weatherization is to be required should mandatory controls go into effect in 1984. Proponents state that standardized procedures for energy audits have been developed and that it is possible to determine the extent to which weatherization such as insulation, storm windows, and weather stripping will result in being "cost effective." "Cost effective" means that there will be enough saving in fuel costs to "pay back" the expense over a ten year period for homes, and a five year period for businesses.

The proposed mandatory feature would require that when a residence is sold, the seller furnish the buyer with a certificate stating that the seller has obtained a free energy audit (sponsored by the utilities or oil companies and certified by the City Energy Commission) and that the seller has completed or arranged for the necessary weatherization shown on the audit. The proponents argue that the mandatory feature will not involve substantial government activity. Compliance will be privately enforced, in the main. It will require significant government assistance only in certifying private energy inspectors and weatherization contractors and in developing standardized audit procedures.

VI. DISCUSSION

Any individual's decision to support or oppose the Measure probably will be influenced by that person's conclusions regarding the need for weatherization and that person's opinion whether voluntary measures alone will be successful. However, this focus on mandatory weatherization partially misses the point.

Passage of the Measure would not necessarily prevent mandatory weatherization from being put into effect. Even if the Measure passes, mandatory weatherization can be implemented by action of the City Council followed by approval of the voters. However, the process would be made more difficult. In addition to its appraisal of the difficulty and expense of a referendum, the Council will be influenced by its judgment of the mood of the voters. That mood will depend on how many voters already have weatherized, their experiences with weatherization, the evidence of "cost effectiveness", and how much assistance they have received from the private and public sectors. Finally, any mandatory weatherization ordinance adopted by the Council would then go before the voters for approval or rejection.

Proponents of the Measure argue that the people should vote on a government program which requires a monetary investment on the part of many of them and a restriction on their personal freedom and a governmental intrusion upon their fundamental property rights, especially when the justification for the restrictions is based in significant part on a "fairness" argument. However, our system of government normally envisions legislative decision-making by elected representatives, not by the voters themselves. If a specific measure is unacceptable to the voters, the referendum process is then available. This Measure requires an automatic referral to the voters of specific rules which have not even been developed, let alone imposed. Your Committee believes passage of the Measure would result in an inefficient governmental process.

The Committee is also concerned that there are no definitions of the word "mandating" and "weatherization" in Measure 51. The City Council must make a determination on each ordinance whether or not the proposal is "mandating" "weatherization", and therefore must be referred to the people for a vote. That determination would in many cases be subject to legal challenges because of the lack of a precise definition for the term "weatherization."

VII. CONCLUSIONS

The City Club has already declined to endorse mandatory weatherization (as defined in the City Energy Policy) by approving the April 27, 1979 report on "Energy Conservation in the Portland Metropolitan Area."² The report recommended that sellers be required to furnish an energy efficiency analysis as a prerequisite to the offering for sale or rent of both residential and commercial buildings.

However, this Committee believes it is not necessary to make a decision about the advisability of mandatory weatherization in order to decide for or against Measure 51. Mandatory weatherization rules and regulations are still in the process of being formulated by the City Energy Commission and the implementing ordinances have not yet been drafted. The mandatory part of the program would not go into effect until September 1984. Prior to that time, the effectiveness of weatherization, especially the cost effective aspects, are to be studied and reported to the Council in 1980, 1982 and 1984. Additional experience with weatherization programs will be available to the Council and Energy Commission

2. Ibid.

during the next four years. This will be of great assistance in formulating a mandatory program and in determining the necessity for such a program.

Your Committee believes it is unwise to set up procedures requiring automatic voter referral of ordinances which have not been formulated and are still under study. The issues involved in the mandatory weatherization question are complex. There are many conflicting statements and reports and a great deal of misinformation. A delicate balance must be maintained between property rights and personal freedom on the one hand, and on the other, the limitations of these rights necessary to deal effectively with the energy crisis. For instance, the personal freedom to waste energy must be balanced against society's need to conserve energy. The complex decisions to achieve this balance should be made at the legislative level (the City Council) and not by an automatic referendum on any and every mandatory weatherization ordinance or rule which may be adopted in the future. The process of referendum should not be invoked in advance, before specific legislative action has been taken.

VIII. RECOMMENDATION

Your Committee recommends a NO vote on Measure 51 at the November 4, 1980 general election.

Respectfully submitted,

Peter Cook
Robert C. Goodwin, Jr.
Rebecca S. Marshall
Stephen S. McConnel
Nedra B. Thatcher
Donald A. Waggoner
Milton C. Lankton, Chairman

Approved for publication by the Research Board on September 30, 1980 and authorized by the Board of Governors for distribution to the membership for discussion and action on Wednesday, October 22, 1980.

APPENDIX A PERSONS INTERVIEWED

Fran Ariniello, Secretary, Freedom Not Force Committee (opponents of mandatory weatherization)
 Pat Bridges, Portland Homebuilders Association
 Ted Davenport, Vice President, Corporate Planning and Development, Pacific Power and Light Company
 Eldon Dean, President, Dean Distributing Company, Inc.; Treasurer, Freedom Not Force Committee (opponents of mandatory weatherization)
 Len Gassner, Executive Director, Oil Heat Institute of Oregon
 Stan Goodell, Executive Vice President, Portland Association of Building Owners and Managers
 Marion Hemphill, formerly Energy Advisor, Office of Planning and Development, City of Portland
 Francis J. Ivancie, Mayor-Elect, City of Portland
 Lee James, Chairman, City of Portland Energy Commission; formerly member, Portland Energy Policy Steering Committee; formerly Associate Administrator, Federal Energy Administration.
 Charles Jordan, Commissioner, City of Portland
 Kevin Kelley, Economist, U.S. National Bank
 Mike Lindberg, Commissioner, City of Portland
 Jeannie McCormick, Acting Energy Advisor, City of Portland
 Connie McCready, Mayor, City of Portland
 Henry Marcus, Planner; former Staff Member, Planning Bureau, City of Portland
 Jack Medak, Realtor and Commercial Property Owner.
 Richard Meeker, Editor, Willamette Week
 Dan Mosee, Multnomah County Commissioner; Chairman, Freedom Not Force Committee (opponents of mandatory weatherization)
 Vern Rifer, Manager of Development, Moran Construction Company; formerly Chairman, Energy Policy Steering Committee and Vice Chairman, City Energy Commission; Chairman of the Board, Portland Energy Conservation, Inc.
 Mildred Schwab, Commissioner, City of Portland
 Grover Sparkman, Portland Board of Realtors

APPENDIX B BIBLIOGRAPHY

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"Thanks, Portland, for good work." By Andy Peoples. January 17, 1980.

APPENDIX C
ORDINANCE NO. 148251
Policy #2 (c.i.)

c. Policy #2 shall be:

RETROFIT OF EXISTING BUILDINGS AND EQUIPMENT

All buildings in the City shall be made as energy efficient as is economically possible as determined by costs of conservation actions and price of energy. The retrofit of existing buildings for the purpose of energy conservation shall be accomplished through voluntary actions initially, with mandatory requirements imposed five years after the adoption of the Policy. Retrofit programs and the requirements must be cost-effective, comprehensive, and have the most equitable impact possible on all sectors of the community.

The objectives of Policy #2 shall consist of two general subsets: Residential (c.i.) and Non-Residential (c.ii.).

c.i. The Residential objectives are:

(1) To insure maximum voluntary compliance with the Policy by PECI establishing a "one stop" energy conservation center for energy audits, financing, energy conservation action, referral to private contractors and program documentation for tax and regulatory purposes.

(2) To further insure maximum voluntary compliance with the Policy by establishing as a key element of PECI's work program the development and implementation of a strategy to aggressively market energy conservation. Such strategy should be designed for specific target groups; use printed and media material as well as personal contact through individual meetings, seminars and workshops; be coordinated closely with the private sector and governmental conservation efforts; make positive use of accomplishments already achieved by the private sector; and rely on voluntary cooperation.

(3) To assist residential property owners to reach a zero net outflow of capital expended for energy conservation actions through a range of financial and tax incentives.

The goal of this directive is to enable conservation actions to be taken which result in owners paying no more for their combined monthly fuel bill plus the weatherization costs than they paid.

previously for fuel alone. Such monthly costs would be averaged over any year, would assume no increase in average monthly consumption for the monthly average of the first year after the actions are taken and would be calculated in constant dollars.

The needs of renters will be satisfied by stimulating owner investment through these and other incentives which reflect the unique character of investor-owned residential properties.

(4) To provide financing for measures not covered by existing programs through establishment of a loan pool in cooperation with private lenders which could be used for conservation loans where no other financing mechanisms are applicable.

(5) To facilitate the choice of financing options so that property owners can maximize their financial benefits.

(6) To achieve the retrofit of 15% of the City's housing units annually through voluntary actions which are cost-effective and satisfy the recommendations of the energy audit.

(7) To achieve the eventual compliance of 100% of the City's housing units by requiring the cost-effective retrofit of all residences in the city beginning five years from the enactment of this ordinance. The requirement will be enforced at the point of sale of the building and will include both owner-occupied and investor-owned properties.

Further, in the cost of structures containing rental housing the retrofit requirement may also be enforced at the point of unit takeover.

The Commission shall recommend to Council new or amended City code provisions and administrative rules, including any authorized exceptions, to carry out this Policy.

(8) To insure that energy audits are comprehensive and that actions recommended are comparable for energy customers by developing a standard method of analyzing conservation measures and investment decisions.

(9) To improve the energy efficiency of new construction by amending the City Building Code to include specific standards for equipment which will reduce energy consumption.

(10) To expand the financial resources available for conservation by requiring that cost-effective weatherization measures be included in home rehabilitation loans funded by the Housing and Community Development Block grant and any other housing program administered by the Portland Development Commission.

(11) To assist the oil heat suppliers located in the City to identify and pursue alternative business opportunities to offset sales lost to conservation.

(12) To avoid additional bureaucratic and administrative procedures by relying on a self-certification procedure for recording

weatherization actions by tax rebates, resale, or rental requirements of this section.

(13) For purposes of this section (c.i.), a "cost-effective retrofit" means those retrofit conservation improvements which meet a ten year simple payback criterion. A "retrofit conservation improvement" means any non-renewable energy conservation improvement applied to an existing building that was not installed at the time the building was constructed and any replacement or rehabilitation of a non-renewable energy conservation improvement that was installed but is in need of replacement or rehabilitation. An improvement or the replacement or rehabilitation of an improvement meets a "ten year simple payback criterion" if the cost of making, replacing, or rehabilitating the improvement (including any interest on the cost of doing so) less the amount of any tax credits, rebates, or other tax savings and financial incentives, less the calculated dollar value of the energy to be saved by the improvement, replacement, or rehabilitation over the immediately following 10 years, is equal to or less than 0.